

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1152 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the Andhra Pradesh State Road Transport Corporation challenging the judgment and award dated 20.11.2007 passed in M.V.O.P. No.334 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Anantapur.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present petition, in brief, are as follows: On 20.4.2006, at about 10.25 A.M., A.Uma Shankar, Junior Lineman in second respondent-APCPDCL, and other staff members were proceeding to Kadiri in Jeep bearing No.ADM 2583 on official work. When the jeep reached near Manneela Cross, the driver of RTC bus bearing No.AP 11Z 437 had driven the same in a rash and negligent manner and dashed against the jeep in which Uma Shankar and his colleagues were travelling. The accident occurred due to rash and negligent driving of the driver of RTC bus against whom the Station House Officer, Itikalapalli Police Station registered a case in Crime No.27 of 2006 under Section 304A IPC. In the accident, Uma Shankar (hereinafter referred to as, the deceased) sustained grievous injuries and died in Government General Hospital, Anantapur while undergoing treatment. By the time of the accident, the deceased was aged about 32 years and used to earn Rs.7,316/- as Junior Lineman in APCPDCL. The petitioners are dependants on the income of the deceased. The first respondent is the owner of bus and the second respondent is owner of the jeep. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.10,00,000/- to the petitioners with interest and costs.

4. The first respondent filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the contributory negligence on the part of the driver of the jeep bearing No.ADM 2583. On seeing the jeep, the driver of the bus had taken the bus towards left side of the road and in spite of the same; the driver of the jeep had driven the jeep in a rash and negligent manner and dashed against the bus. The amount of compensation claimed by the petitioners,

under various heads, is highly excessive and exorbitant. Hence, the petition against this respondent is liable to be dismissed.

5. The second respondent filed counter supporting the version of the petitioners. The accident occurred due to the rash and negligent driving of the driver of the RTC bus and there was no negligence on the part of the driver of the jeep. Hence, the petition against this respondent is liable to be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred on 20.4.2006 due to rash and negligent driving of the vehicle i.e., APSRTC bus bearing No.AP 11Z 437 by its driver and caused the death of the deceased?
2. Whether the petitioners are entitled for compensation and if so, to what amount and from which of the respondents?
3. To what relief?

7. During the course of the trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A8 were marked. On behalf of the first respondent, R.W.1 was examined, but no document was marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the RTC bus, which resulted in the death of deceased, and allowed the petition in part by awarding compensation of Rs.8,26,408/- with interest at 6% per annum from the date of petition till the date of deposit, directing the first respondent–APSRTC to pay the compensation. The petition against second respondent–APCPDCL was dismissed. Feeling aggrieved by the judgment and award passed by the Tribunal, the first respondent–APSRTC preferred the present appeal.

9. Heard Sri A.Rama Rao, learned standing counsel for the appellant–APSRTC, Sri N.Aswarthanarayana, learned counsel for the respondent Nos.1 to 4–claimants and Sri P.Ananda Seshu, learned standing counsel for respondent No.5–APCPDCL.

10. The contention of learned counsel for the appellant is two fold: (1) the Tribunal failed to consider that the accident occurred due to the negligence on the part of the driver of the jeep; and (2) the amount of compensation awarded by the Tribunal is on higher side. *Per contra*, learned counsel for the claimants and learned standing counsel for APCPDCL submitted that the Tribunal has assigned cogent and valid reasons to its

findings and there are no grounds to interfere with the well considered judgment and award of the Tribunal.

11. Now the points that arise for consideration in this appeal are:

(1) Whether the driver of the jeep was also responsible to cause the accident? and

(2) Whether the amount of compensation awarded by the Tribunal is just and reasonable?

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Point No.1:

12. In order to prove the manner of the accident, the first petitioner examined herself as P.W.1 and got marked Exs.A1 to A5. P.W.2 is the eye witness to the accident. To demolish the case of the petitioners, the driver of RTC bus was examined as R.W.1. The testimony of P.W.1 is no way helpful to prove the negligence on the part of the driver of RTC bus as she is not an eye witness to the accident. The testimony of P.W.2 is that on the date of the accident, the deceased along with other staff members was proceeding to Kadiri on official work in jeep bearing No.ADM 2583. When the jeep reached Manneela Cross, the driver of the RTC bus bearing No.AP 11Z 437 had driven the same in a rash and negligent manner and dashed against the jeep. As per the testimony of R.W.1, when the bus reached near Manneela Cross, the driver of the jeep, without observing the traffic, had driven the same in a rash and negligent manner and dashed against the RTC bus. If the testimony of P.W.2 is taken into consideration, the accident occurred due to rash and negligent driving of the bus. If the testimony of R.W.1 is taken into consideration, the accident occurred due to the rash and negligent driving of the jeep. P.W.2 is an independent eye witness to the accident when compared to R.W.1. If really the accident occurred, as stated by R.W.1, what prevented him to lodge a complaint to the Police immediately after the accident? In the cross-examination, R.W.1 in unequivocal terms deposed that the Police investigated into the matter and filed the charge sheet against him. As per the recitals of Ex.A1–F.I.R., and Ex.A4–charge sheet, the accident occurred due to the rash and negligent driving of the driver of the RTC bus. As per the recitals of Ex.A5–Motor Vehicle Inspector's report, there was no mechanical defect in the crime vehicle. As per the recitals of Ex.A2–Inquest report, and Ex.A3–Post Mortem Certificate, the deceased died due to the injuries sustained

in the road accident that occurred on 20.4.2006. In the cross-examination of P.W.2, nothing is elicited to shake his testimony. The possibility of distortion of facts by R.W.1 cannot be ruled out for two reasons: (1) He being accused in the criminal case in order to get acquittal by throwing the blame on the driver of the jeep; and (2) He being the employee of the first respondent—APSRTC in order to avoid payment of compensation to the petitioners. The oral testimony of R.W.1 is not supported by documentary evidence. On the other hand, the oral testimony of P.Ws.1 and 2 is fully supported by Exs.A1 to A5 so far as the negligence on the part of the driver of the RTC bus and the factum of death of deceased are concerned. The testimony of P.Ws.1 and 2 rightly considered by the Tribunal. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal.

13. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the bus, which resulted in the death of the deceased. Therefore, the contention of the appellant—APSRTC that the accident occurred due to the negligence of the driver of the jeep is not sustainable. Accordingly, point No.1 is answered.

Point No.2:

14. By the time of the accident, the deceased was aged about 35 years. The Tribunal has taken the multiplier '17'. As per the principle enunciated in **Sarla Verma v DTC**, proper multiplier applicable for the age group of 31 – 35 years is '16'. The Tribunal has taken the salary of the deceased as Rs.6,003/- per month and deducted 1/3rd towards personal expenses of the deceased. In this case, the claimants are 4 in number. Therefore, the Tribunal ought to have deducted 1/4th of the income towards personal expenses of the deceased as per the principle enunciated in **Sarla Verma** case. The contribution of the deceased to his family is around (Rs.6,003 – Rs.1,500.75) Rs.4,500/- per month. Loss of dependency comes to (Rs.4,500 X 12 X 16) Rs.8,64,000/-. The Tribunal also awarded an amount of Rs.10,000/- towards loss of consortium. The compensation for which the petitioners are entitled to is Rs.8,64,000 + Rs.10,000 = Rs.8,74,000/-. The Tribunal awarded Rs.8,26,408/- only. Admittedly, the claimants have not filed appeal or cross-objections challenging the quantum of compensation awarded by the Tribunal. In view of the principle enunciated in **Ranjana Prakash v Divisional Manager**, in an

appeal filed by the owner/insurer, the High Court cannot enhance the compensation. Hence, this court has no option except to restrict the compensation to Rs.8,26,408/- as awarded by the Tribunal. There are no grounds much less valid grounds to modify or set aside the findings of the Tribunal. The appeal lacks merits. Accordingly, point No.2 is answered.

15. In the result, the appeal is dismissed. There shall be no order as to costs. The miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 01.4.2015

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